

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY)	
UTILITIES COMPANY FOR AN)	CASE NO. 2014-00371
ADJUSTMENT OF ITS ELECTRIC)	
RATES)	

KENTUCKY UTILITIES COMPANY’S
OBJECTION TO PETITION OF WALLACE MCMULLEN AND SIERRA CLUB
FOR FULL INTERVENTION

Kentucky Utilities Company (“KU” or the “Company”) respectfully requests that the Commission deny the petition of Wallace McMullen and Sierra Club (collectively, the “Movants”) for intervention. Their petition should be denied for two principal reasons: (1) the petition does not demonstrate a special interest in the proceeding because the stated interests are either not within the Commission’s jurisdiction or are adequately represented by other parties; and (2) the petition fails to show that either Movant will identify any relevant issues or develop relevant facts that will assist the Commission in the resolution of this matter without unduly complicating and disrupting the proceeding. Because neither Mr. McMullen nor the Sierra Club has satisfied any of the requirements for intervention under 807 KAR 5:001 § 4(11)(b), KU respectfully requests that the Commission deny their petition for intervention.

Neither Mr. McMullen nor the Sierra Club Has a Special Interest in this Proceeding

The Commission may grant Movants intervention only if they meet the requirements of 807 KAR 5:001 § 4(11)(b). The Movants do not satisfy the first basis for permissive intervention, which requires a movant to demonstrate a special interest in the proceeding that is not already represented by another party to the action.¹

¹ 807 KAR 5:001 § 4(11)(b).

Mr. McMullen cannot satisfy this ground for intervention for the simple reason that neither does he claim to be a KU customer—the Movants’ petition clearly states he is an LG&E customer—and therefore cannot have a cognizable interest of his own in this proceeding,² nor does the petition claim that Mr. McMullen represents any KU customer.³ The Commission’s orders on intervention are clear that a movant must either have a direct interest in the subject matter of the proceeding—in a rate case, that interest must be the actual paying of the rates at issue—or be an authorized representative of persons with a direct interest in the case.⁴ Because Mr. McMullen is not a KU customer and does not claim to be any KU customer’s authorized representative, he cannot have a special interest in this case and cannot receive intervention on this ground.

With respect to Sierra Club, a party has standing to intervene on behalf of its members only to the extent that it is a customer of the utility or has been authorized by its members who are customers of that utility.⁵ Sierra Club does not claim to be a KU customer, and although Sierra Club asserts in its motion that it represents its members who are KU customers, it fails to identify those members and which of those members have authorized Sierra Club to seek

² *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Base Rates*, Case No. 2008-00252, Order at 4 (Oct. 10, 2008) (“Thus, Mr. Young’s interest in LG&E’s rate structure does not arise from his status as an LG&E ratepayer, since he is not one. ... The Commission finds that Mr. Young’s interest as a KU ratepayer who wants to protect LG&E’s rate structure is simply too remote to justify granting his request to intervene in this LG&E rate proceeding. Mr. Young has no actual legal interest in LG&E’s rates or service, and he has not shown that any issue to be resolved in this case will have a financial, legal, or any other impact on him.”).

³ Petition at 3 (“Movant Wallace McMullen is a customer of LG&E, and a long-time Sierra Club member who has a deep interest in an LG&E residential rate structure that is fair and reasonable, and will not penalize energy efficient customers.”).

⁴ *See, e.g., In the Matter of: Application of Big Rivers Electric Corporation for an Adjustment of Rates*, Case No. 2012-00535, Order at 5-6 (Apr. 17, 2013).

⁵ *See, e.g., In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Site Compatibility Certificate for the Construction of a Combined Cycle Combustion Turbine at the Cane Run Generating Station and the Purchase of Existing Simple Cycle Combustion Turbine Facilities From Bluegrass Generation Company, LLC in LaGrange, Kentucky*, Case No. 2011-00375, Order (Dec. 14, 2011).

intervention on their behalf in this proceeding.⁶ A general statement that an association has members who are served by an applicant utility is not sufficient to establish standing for intervention.⁷ Accordingly, the Commission should not grant Sierra Club's motion until it has identified those of its members who are KU customers that have authorized it to intervene on their behalf.

But even assuming Sierra Club can cure this deficiency by finding a KU customer to join its motion, it still cannot have a special interest in this proceeding not otherwise adequately represented by another party. The Commission recently held that Sierra Club and its individual utility-customer co-movant seeking intervention in a rate case lacked any special interest in the case because Sierra Club's individual members had the same interest in the rates and service of the utility as did all the other individual customers of that utility, customers already adequately represented by the Attorney General.⁸ The Commission so held even though Sierra Club and its customer representative claimed that the Attorney General could not adequately represent their interests in "promoting energy efficiency, renewable energy, and other low carbon generation resources as the most reasonable and cost effective way for Big Rivers to maintain essential electric services and meet new and emerging federal regulatory requirements."⁹ Here, the Sierra Club makes an even narrower claim to be interested in this proceeding, namely its interest in how KU's proposed rates will affect customers' energy-efficiency incentives and distributed

⁶ Petition at 3.

⁷ *In the Matter of: Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2009-00141, Order (July 15, 2009). See also *In the Matter of: Application of Louisville Gas and Electric Company for Approval of An Alternative Method of Regulation of Its Rates and Services*, Case No. 98-426, Order (Mar. 24, 1999) (requiring intervenor to submit the names and addresses of one or more utility customers that it would represent in proceeding).

⁸ *In the Matter of: Application of Big Rivers Electric Corporation for an Adjustment of Rates*, Case No. 2012-00535, Order at 6 (Apr. 17, 2013) ("While Movants [Sierra Club and Ben Taylor] certainly have an interest in Big Rivers' rates being fair, just, and reasonable, they have not established how their interest in this issue differs from the interest of all other Big Rivers' customers or how the AG's representation is not adequate to protect their interest.").

⁹ *Id.* at 2 (internal quotation marks omitted).

generation.¹⁰ The Commission should follow its recent precedent by refusing to grant the Sierra Club intervention on this claimed special interest, which is an arguably weaker interest than the one the Commission found unavailing in the Big Rivers proceeding.

Moreover, the Commission has foreclosed any argument that additional customer intervention is necessary when the Attorney General is participating in the case on behalf of the customers, including when the customer or customer representative claims to have a special interest in supporting “renewable energy and energy conservation issues”:

[T]he AG, as the statutorily authorized representative of Kentucky’s utility customers, has a continuing interest in articulating and advocating support for renewable energy and energy conservation issues - the same issues that [a customer] seeks to advocate in this proceeding. The Commission further finds that the AG has consistently exercised his statutory duty to investigate these energy policy issues and to advocate their consideration by the Commission in its examination of the IRPs filed by Kentucky’s jurisdictional electric utilities over the past several years.¹¹

The Commission further relevantly stated in an order denying Sierra Club’s special interest in an IRP proceeding:

While the Petitioners’ certainly have an interest in energy efficiency, demand-side management, and renewable energy, they have not shown how their interest in these issues differs from the interest of all other KU and LG&E customers or how the AG’s representation is not adequate to protect their interests.¹²

In sum, Sierra Club’s individual members who are KU customers—customers Sierra Club has not identified—have interests in KU’s rates and how those rates might impact energy-efficiency efforts or distributed generation that are no different than the interests of all other individual KU customers, whose interests the Commission has repeatedly and unequivocally

¹⁰ Petition at 2.

¹¹ *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-148, Order at 8 (July 18, 2008).

¹² *See In the Matter of The 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2011-00140, Order at 6 (July 11, 2011).

held are more than adequately represented by the Attorney General, who is an intervener in this proceeding. Therefore, Sierra Club cannot intervene in this proceeding on the ground that its as-yet-unidentified KU-customer members have a special interest not otherwise adequately represented in this proceeding.

Sierra Club presents another claimed special interest in this proceeding, namely as an advocate for low-income customers' interests.¹³ This assertions stands in sharp contrast with Sierra Club's public description of itself as "the nation's largest and most influential grassroots environmental organization."¹⁴ But even if Sierra Club could provide any evidence that even a single low-income KU customer is asking Sierra Club to represent low-income interests in this proceeding, such interests are already well represented in this proceeding by the Attorney General, who represents all customers, and the Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas Counties, Inc. ("CAC"), which actually is a low-income advocacy and service agency that has repeatedly and capably represented low-income interests in KU's cases before the Commission, including recent rate cases.¹⁵ There is therefore neither any reason to believe Sierra Club actually represents low-income customers' interests, nor any reason to believe such interests will not be well represented by current parties to this proceeding; therefore, the Commission should not grant Sierra Club intervention on this ground.

Finally, to the extent Sierra Club seeks to intervene in this case to represent the environmental interests that are its *raison d'être* as "the nation's largest and most influential grassroots environmental organization," the Commission cannot grant it intervention; such issues are beyond the Commission's jurisdiction. Both the Kentucky Court of Appeals and the

¹³ Petition at 2.

¹⁴ <http://www.sierraclub.org/about> (viewed on Dec. 18, 2014).

¹⁵ See, e.g., *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2012-00221, Order (June 27, 2012) (granting CAC intervention).

Commission have made clear that a person seeking intervention must have “an interest in the ‘rates’ or ‘service’ of a utility, since those are the only two subjects under the jurisdiction of the PSC.”¹⁶ The Commission has clearly stated that environmental concerns *per se* are outside its jurisdiction:

Notably absent from the Commission’s jurisdiction are environmental concerns, which are the responsibility of other agencies within Kentucky state government To the extent that [the proposed intervenor] seeks to address issues in this proceeding that deal with the impact of air emissions on human health and the environment, this is not the proper venue for those issues to be considered.¹⁷

Ultimately, the Sierra Club has failed to demonstrate a special interest for three reasons. First, Wallace McMullen is not a KU customer, and therefore cannot have a cognizable interest in this proceeding. Second, even if Mr. McMullen were a KU customer, the Commission has repeatedly denied efforts by individual residential customers to intervene because their interest is common to all customers. If Mr. McMullen lacks a special interest, so must the Sierra Club, whose cognizable interest in this proceeding must be subsidiary of the customers it claims to represent because Sierra Club is not a KU customer in its own right. Third, as shown above, Sierra Club does not have a special interest in this proceeding not already represented ably by other persons who have received intervention. Therefore, the Commission should not grant Sierra Club intervention on this ground.

**The Movants Have Not Demonstrated that They Will Present Issues
or Develop Facts that Will Assist the Commission**

Because Mr. McMullen and the Sierra Club lack an interest in this proceeding that is not adequately represented by other parties, the Movants may intervene only if they can show that

¹⁶ *EnviroPower, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 at 4 (Ky. App. 2007) (not to be published); *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-148, Order (July 18, 2008).

¹⁷ *In the Matter of The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-148, Order at 5-6 (July 18, 2008).

they will present issues or develop facts that will assist the Commission without unduly complicating or disrupting the proceeding. Their petition fails to do so.

Concerning Mr. McMullen, the petition does not make any specific claims of expertise on his behalf. Even the petition's generic claims concerning expertise clearly are meant to apply only to the Sierra Club, not Mr. McMullen.¹⁸ Although Mr. McMullen has been a named intervener in several cases concerning KU and its sister utility, Louisville Gas and Electric Company, Mr. McMullen has not provided testimony or otherwise substantively participated in any of the proceedings; rather, he is Sierra Club's "named plaintiff," the Sierra Club member willing to lend his name for Sierra Club to obtain intervention. Because the petition claims no specific expertise for Mr. McMullen, and because he has shown none in the cases in which he has been a named intervener, the Commission should not grant him intervention on this ground.

Concerning the Sierra Club, it claims it will provide the Commission useful expertise in this proceeding, but careful examination shows the Sierra Club has not shown it possesses any expertise relevant to this base-rate proceeding; rather, the Sierra Club's claims show that its intervention will serve only to unnecessarily disrupt and complicate this case. The petition claims Sierra Club will be able to offer useful expertise to the Commission because, "Having intervened in general rate cases, integrated resource planning cases, certificate of public convenience and necessity cases, and demand-side management proceedings in Kentucky and in other jurisdictions, the Movants have extensive experience evaluating the underlying issues raised in the Companies' rate applications."¹⁹ Sierra Club further claims to have "substantial knowledge and experience in the principles of rate design and the impacts of rate structure on

¹⁸ See, e.g., Petition at 1 ("Having intervened in general rate cases, integrated resource planning cases, certificate of public convenience and necessity cases, and demand-side management proceedings in Kentucky and in other jurisdictions, the Movants have extensive experience evaluating the underlying issues raised in the Companies' rate applications.").

¹⁹ *Id.*

consumer behavior based on our advocacy in Kentucky and other jurisdictions.”²⁰ More specifically, Sierra Club claims it will offer helpful views and information on three issues: (1) the effect of the proposed residential basic service charge on energy efficiency, conservation, and distributed generation; (2) the effect of the proposed residential basic service charge on low-income customers; and (3) KU’s proposed optional residential time-of-day rates.²¹

In fact, to the best of KU’s information Sierra Club has intervened in only one base-rate proceeding in Kentucky, albeit one that stretched across two cases: Case Nos. 2012-00535 and 2013-00199.²² At issue in that essentially combined proceeding was a sizeable base-rate increase for Big Rivers Electric Corporation due to a significant loss of load resulting from the effective departure from its system of two aluminum smelters. Clearly at issue in that proceeding for Big Rivers was the future of its generating portfolio given the significant loss of load. Sierra Club claimed to have expertise on ways to mitigate the effect of the loss of load through energy efficiency and other means; it was on that ground alone that the Commission granted Sierra Club intervention in Case No. 2012-00535 over the objection of Big Rivers: “The Commission is, however, persuaded that the Sierra Club, acting on behalf of Mr. Taylor, does possess sufficient expertise on issues that are within the scope of this base rate proceeding, such as whether Big Rivers’ proposed rate increase is reasonable in light of all available alternatives to mitigating the loss of a significant load.”²³

But whatever the merits of Sierra Club’s testimony in that proceeding on how to address Big Rivers’ significant loss of load, such testimony could have no bearing on this proceeding:

²⁰ *Id.* at 1-2.

²¹ *Id.* at 5-6.

²² *In the Matter of: Application of Big Rivers Electric Corporation for an Adjustment of Rates*, Case No. 2012-00535, and *In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, Case No. 2013-00199.

²³ *In the Matter of: Application of Big Rivers Electric Corporation for an Adjustment of Rates*, Case No. 2012-00535, Order at 6 (Apr. 17, 2013).

KU's Kentucky jurisdictional retail load has not decreased, and no loss of load is driving KU's requests or proposals in this proceeding. Moreover, it is noteworthy that Sierra Club's testimony in the Big Rivers proceeding did not address traditional cost-of-service issues, rate allocation, return on equity, or any other rate-making issue that will be relevant to this proceeding. So the kind of expertise the Commission found sufficient to grant Sierra Club intervention in the Big Rivers cases simply does not have any relevance or bearing in this case, and Sierra Club did not demonstrate in the Big Rivers proceeding any expertise that could be relevant to this proceeding. Therefore, the Commission should not find Sierra Club has any expertise relevant to this proceeding simply because Sierra Club participated in Big Rivers' recent base-rate proceeding.

Concerning the expertise Sierra Club claims from participating in some of KU's IRP, DSM, and CPCN proceedings, KU's response is simply that this base-rate proceeding is not one of those cases. The Commission recently entered a final order in a DSM case in which Sierra Club received intervention; but that case is over, and those issues are settled. All of KU's generating units and power-purchase agreements have been the subject of Commission proceedings that are closed or are now ongoing; the issues in those proceedings should not be re-litigated here. The same is true for KU's current IRP proceeding, in which the Sierra Club has received intervention. In other words, this case should not be a forum for the Sierra Club to re-litigate issues already litigated or currently being litigated in other proceedings before the Commission; basic principles of claim and issue preclusion, as well as administrative efficiency, forbid it. So whatever the merits of Sierra Club's intervention in those other proceedings, they should have no bearing on this case, which addresses only whether KU's proposed rates are fair, just, and reasonable.

Finally, none of Sierra Club's three specific claims of expertise will increase the relevant expertise already present among the Commission and the interveners in this proceeding, making any information Sierra Club might offer either irrelevant or duplicative, and therefore unduly complicating to, and disruptive of, this proceeding. First, the effect of KU's proposed residential basic service charge on energy efficiency, conservation, or distributed generation is not relevant to this proceeding; the only relevant question is whether the proposed charge, particularly in the context of all of KU's proposed rates based on traditional cost-of-service principles, is fair, just, and reasonable. Moreover, KU has proposed to increase the residential basic service charge in previous rate cases, and the interveners in those proceedings have consistently opposed the increases and ultimately negotiated with KU to arrive at lower residential basic service charges than proposed. The same interveners, including the Attorney General, are already interveners in this proceeding, and have all the relevant expertise necessary to address residential basic service charges; the Sierra Club's intervention to address this issue would be unnecessary at best.

Second, for the same reasons just given, the Attorney General and CAC are more than sufficiently expert to address the effects of KU's proposed residential basic service charge on low-income customers. Other than Sierra Club's making a bare claim to having expertise on this issue, it is not obvious how or why an environmental group would have any relevant expertise on how rates affect low-income customers. Therefore, the Sierra Club's intervention to address this issue would also be unnecessary at best.

Third, the Commission and interveners in this proceeding already have more than sufficient expertise to address KU's proposed optional residential time-of-day rates. As KU noted in its application in this case, its proposed time-of-day rates are the product of multiple pilot programs and years of experience with residential time-of-day rate offerings. The Attorney

General and other interveners in this proceeding are familiar with those offerings, so no additional intervention is necessary to aid the Commission in considering KU's proposed optional residential time-of-day rates; indeed, the Sierra Club's intervention to address this issue would likely be duplicative, resulting in undue complication and disruption, and the Commission should deny Sierra Club's petition on this ground.

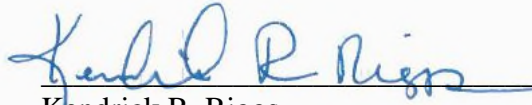
Conclusion

Neither Mr. McMullen nor the Sierra Club has satisfied either of the bases for permissive intervention set forth in 807 KAR 5:001 § 4(11)(b). Neither has articulated any special interest that is not already adequately represented by other parties, and neither has shown an ability to present issues or develop facts that will assist the Commission in considering KU's proposed rates without unduly complicating and disrupting this proceeding. To the extent Mr. McMullen or the Sierra Club wish to express their views, they, like other members of the public, can submit written public comments in the record.

WHEREFORE, Kentucky Utilities Company respectfully requests that the Commission deny their petition to intervene.

Dated: December 22, 2014

Respectfully submitted,

A handwritten signature in blue ink, reading "Kendrick R. Riggs", is written over a horizontal line.


Kendrick R. Riggs
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202-2828
Telephone: (502) 333-6000
Fax: (502) 627-8722
kendrick.riggs@skofirm.com

Allyson K. Sturgeon
Senior Corporate Attorney
LG&E and KU Services Company
220 West Main Street
Louisville, Kentucky 40202
Telephone: (502) 627-2088
Fax: (502) 627-3367
allyson.sturgeon@lge-ku.com

Counsel for Kentucky Utilities Company

CERTIFICATE OF COMPLIANCE

This is to certify that Kentucky Utilities Company's December 22, 2014 electronic filing of the Objection is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on December 22, 2014; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original in paper medium of the Objection will be hand-delivered to the Commission on December 23, 2014.



Gerald R. Rieps
Counsel for Kentucky Utilities Company